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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter Of:

NYNEX Petition For Forbearance From
Application Of The Communications Act
Of 1934, As Amended, To Previously
Authorized Services

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CC Docket 96-149

NYNEX PETITION FOR FORBEARANCE¹

To the extent interLATA E911 services offered by NYNEX² are deemed to be information services, and the FCC does not grant blanket forbearance,³ NYNEX hereby requests that the Commission, pursuant to Section 10 of the Communications Act,⁴ forbear from applying Section 272 separate affiliate requirements to those E911 services.

¹ The NYNEX Telephone Companies ("NYNEX") are New England Telephone and Telegraph Company and New York Telephone Company.

² NYNEX E911 services include the capability for interLATA queries to a NYNEX centralized database to provide the Public Safety Answering Point ("PSAP") the number, location and related information on the 911 caller in order to facilitate quick emergency responses.

³ See NYNEX Reply Comments filed May 6, 1997 in CC Docket No. 96-149, DA 57-599.

⁴ Added by the Telecommunications Act of 1996.

Section 10 requires the Commission to forbear from applying Section 272 of the Act if the Commission determines that: (1) enforcement is not necessary to ensure just and reasonable rates; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. These standards are clearly met with respect to E911 service.

First, to impose a Section 272 separate affiliate requirement is completely unnecessary to ensure just and reasonable rates. That Section 272 requirement is geared to placing certain competitive, nonregulated BOC offerings on a similar footing compared to nonaffiliated providers, and is not designed to regulate rates. In authorizing BOCs to provide interLATA E911 services, the MFJ Court previously decided that such an offering would “not endanger competition.”⁵ Similarly, the U.S. Department of Justice (“DOJ”) has concluded that BOC provision of interLATA E911 service “does not present any threat to competition among interexchange service providers.”⁶

Second, imposing the separate affiliate safeguards on E911 service is not necessary to protect consumers. Indeed, to impose that regulatory requirement

⁵ U.S. v. Western Electric Co., Civ. Act. No. 82-0192, 1984 U.S. Dist. LEXIS 10566 (D.D.C. 1984).

⁶ Letter from Constance K. Robinson, Chief, Communications & Finance Section, U.S. Department of Justice, Antitrust Division to Alan F. Ciampariero, Pacific Telesis Group (Mar. 27, 1991), citing Motion Of The United States For A Waiver Of The Modification Of Final Judgment To Permit The BOCs To Provide MultiLATA 911 Service (Nov. 17, 1988).

would interfere with the BOC's continued ability to provision E911 service on an efficient, integrated basis, using local telephone company engineered facilities and information, and would be detrimental to the public interest. The E911 service is inextricably linked to the BOC service provider, and attempts to mandate separation from the BOC could interfere with the integrity of the service. If the Commission were to require separate facilities for E911 calls, the cost of the service would increase significantly. The MFJ Court found that permitting BOCs to continue providing E911 service would "serve the public interest by avoiding expensive reconfigurations and unnecessary disruption of telephone service."⁷

Finally, forbearance for E911 service is in the public interest. As noted earlier, the MFJ Court and DOJ have already determined that BOC provision of E911 service will clearly serve the public interest. As the DOJ has stated, "[a]llowing the BOCs to provide interLATA 911 services and E911 service is in the public interest for it permits customers to reach providers of emergency services conveniently and efficiently."⁸ The BOCs have provided E911 services

⁷ U.S. v. Western Electric Co., 1984 U.S. Dist. LEXIS 10566, supra.

⁸ Letter dated March 27, 1991 from Constance K. Robinson, supra, p. 1. Further, the FCC has previously observed: "[i]t is difficult to identify a nationwide wire or communication service more immediately associated with promoting safety of life and property than 911." Revision Of The Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Notice Of Proposed Rulemaking released October 19, 1994, 9 FCC Rcd 6170, para. 7. See also Procedures For Implementing The Detariffing Of Customer Premises Equipment And Enhanced Service (Second Computer Inquiry), CC Docket No. 81-893, Seventh Report And Order released January 23, 1996, 1986

for many years with no indication that structural separation is needed to protect the public interest and ensure reasonable rates.

III. CONCLUSION

The Commission should forbear from applying Section 272 regulatory constraints to NYNEX's E911 service.

Respectfully submitted,

The NYNEX Telephone
Companies

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FCC LEXIS 4115, para. 27 ("The Common Carrier Bureau has previously concluded that the provision of 911 emergency service directly promotes the statutory objective embedded in Section 1 of the Communications Act, 47 U.S.C. § 151, of 'promoting safety of life and property through the use of wire and radio communications.'")